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PTO/59/66 (03-09)

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U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Fax: (571) 273-8300

10/03/2012 DALLN 00000010 6669657

01 FC:1599

625.00 OP

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: 6669657

Application Number: 09/665608

Issue Date: December 30, 2003

Filing Date: September 20, 2000

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent. ~~10/03/2012 DALLN 00000010 6669657~~ is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

01 FC:1599

625.00 OP

Also complete the following information, if applicable:

The above-identified patent:

☒ is a reissue of original Patent No. 6669657 original issue date December 30, 2003
original application number 09/665608
original filing date 9/20/2000

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of International application
_____ filed on _____

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

September 28, 2012

Date

Deanna T. Ongwela
Signature

Deanna T. Ongwela

Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 36 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing this form, call 1-800-PTO-0100 and select option 2

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PTO/SB/85 (03-09)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input type="checkbox"/> \$ _____	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ _____

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 625.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.SURCHARGE FEE BEING SUBMITTED \$ 625.00

5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ _____
- ☐ Please charge Deposit Account No. _____ the sum of \$ _____
- ☒ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. _____

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PTO/SB/05 (03-09)

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Under the Paperwork Reduction Act of 1996, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

7. OVERPAYMENT

As to any overpayment made, please

☐ Credit to Deposit Account No. _____

OR

☐ Send refund check

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

Deanna T. Ongwela
Signature(s) of Petitioner(s)

9/28/12

Date

Deanna T. Ongwela
Typed or printed name(s)

Registration Number, if applicable

9231 Redbridge Court
Address

410.880.4091

Telephone Number

Laurel, MD 20723
Address

2012 SEP 28 AM 10:53

ENCLOSURES:

- ☐ Maintenance Fee Payment
☐ Statement why maintenance fee was not paid timely
☒ Surcharge under 37 CFR 1.20(l)(1) (fee for filing the maintenance fee petition)
☒ Other: Request for information papers (5 pages)

PTO/SB/65 (03-09)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

Deanna T. Ongwela
Signature

9/28/2012

Date

Deanna T. Ongwela
Type or printed name

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

Please see attached letter with attached "Request for Information" and supporting documents. (Total: 8 pages)

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(Please attach additional sheets if additional space is needed)

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September 28, 2012

Attention: Office of Petitions
(571) 273-8300

In re Patent of Deanna T. Ongwela
Patent No. 6, 669,657
Issue Date: December 30, 2003
Application No. 09/665,608
Filing Date: September 20, 2000
For: Massage and Tactile Stimulation
Device


Response to Request for Information

This letter responds to a paper received August 01, 2012.

Petitioner wishes for the Office to address the merits of the previously submitted petition under 37 C.F.R. § 1.378(b). Petitioner has submitted an additional \$625 (\$700 - \$25) on form PTO-2038 via the same debit card number used for the 7.5 year maintenance fee.

The Office requested Petitioner identify the nature of the card used to pay the 7.5 year maintenance fee on January 6, 2012. The credit card was a debit card attached to Petitioner's bank account. Attached is the bank statement showing the balance of the Petitioner's account at the time maintenance fee was due. The balance demonstrates the available funds were not enough to pay the \$1500 (\$1425 + 75 late fee) which reflected the rate increase by December 2011. Therefore, Petitioner required the addition of the January 6, 2012 paycheck unavoidably delaying payment.

Thank you in advance for careful review of this and previously submitted papers.


Deanna T. Ongwela
Patent#: 09/665,608
9231 Redbridge Court
Laurel, MD 20723
410.880.4091

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Attachments: Petition 37 C.F.R. § 1.378(b)
PTO-2038 for Surcharge under 37 CFR 1.20(i)(1) (fee for filing the
maintenance fee petition)
Request for Information



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Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
www.uspto.gov

Deanna T Ongwela
9231 Redbridge Court
Laurel MD 20723

MAILED

AUG 01 2012

OFFICE OF PETITIONS

In re Patent of Deanne T. Ongwela :
Patent No. 6,669,657 :
Issue Date: December 30, 2003 :
Application No. 09/665,608 :
Filing Date: September 20, 2000 :
For: Massage and Tactile Stimulation :
Device :

Request for Information

This letter responds to a paper filed May 2, 2012.

Background

The patent issued December 30, 2003.

The 7.5 year maintenance fee was due between December 30, 2010, and June 30, 2011, or with a surcharge, from July 1, 2011, to December 30, 2011.

Petitioner's husband passed away during April 2011, and Petitioner closed her small business during June 2011 to take care of her 9-year old son.

As of August 2011, Petitioner was aware of the need to pay the 7.5 year maintenance fee and the required surcharge in order to prevent the expiration of the patent. Petitioner was also aware the 7.5 year fee was \$1,240, and the surcharge was \$65.

Effective September 26, 2011, the 7.5 year maintenance fee for small entities was increased to \$1,425 and the surcharge for submitting a maintenance fee payment during the six-month grace period was increased to \$75. In other words, the total fee due to prevent the expiration of the patent increased from \$1,305 (\$1,240 + \$65) to \$1,500 (\$1,425 + \$75).

During December 2011, Petitioner contacted the Office to clarify the fees owed and learned the fees had been increased.

In papers filed January 27, 2012, Petitioner asserts she was unable to pay the fees prior to receiving a paycheck on January 6, 2012, due to the unexpected significant increase in the fees.

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Patent No. 6,669,657

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The maintenance fee was not timely paid on or before December 30, 2011, and the patent expired on December 31, 2011.

Petitioner filed a Maintenance Fee Transmittal Form and a Credit Card Authorization Form by facsimile transmission upon receiving the January 6, 2012 check, or very shortly thereafter.

Several days later, Petitioner noticed the Office had not charged any fees to the credit card. Petitioner then contacted the Office and learned the fee could not be accepted because the patent had expired.

Petitioner contacted the Office of Petitions and was informed a patent can be reinstated by filing a grantable petition under 37 C.F.R. § 1.378(b) *with a surcharge of \$700* or by filing a grantable petition under 37 C.F.R. § 1.378(c) with a \$1,640 surcharge.

Petitioner filed a letter on January 27, 2012, requesting the Office accept the late submission of the \$1,500 without requiring payment of any additional fees. A credit card authorization form was filed with the January 27, 2012 letter.

On January 31, 2012, the Office contacted Petitioner and informed her that the credit card authorization form she submitted January 27, 2012, fails to identify the card's expiration date. Petitioner promptly submitted a corrected credit card authorization form, and \$1,500 was charged to the credit card on February 1, 2012.

Petitioner has submitted a copy of a February 10, 2012 letter from the Office to Petitioner. The letter states, with emphasis added,

[T]he USPTO may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to have been unavoidable or unintentional *and* if the surcharge required by section 1.20(i) is paid....

A petition to accept late payment of a maintenance fee, where the delay was unavoidable, *must* include ... the surcharge set forth in 37 CFR 1.20(i)(1).

The Office mailed a second document responding to the January 27, 2012 correspondence on March 5, 2012. The document states,

The required \$700 surcharge has not been submitted. Therefore, the merits of the petition under 37 C.F.R. § 1.378(b) will not be addressed at this time.

Petitioner has submitted the 7.5 year maintenance fee and an additional \$75. If Petitioner wishes for the Office to address the merits of the petition under 37 C.F.R. § 1.378(b), Petitioner must submit an additional \$625 (\$700 - \$25) within TWO MONTHS of the mailing date of this letter. Extensions of time may not be obtained. The response to this Requirement for Information should include a cover letter entitled "Response to Request for Information." The failure to file a timely reply to the instant Request for Information

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Patent No. 6,669,657

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will be interpreted as a desire to no longer pursue reinstatement of the patent and the Office will give no further consideration to the matter.

If Petitioner does not wish to submit the additional \$625, Petitioner may request a refund of the \$1,500 submitted January 27, 2012. A request for a refund of the \$1,810 may be sent to: Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this letter should accompany any request for refund.

If a response to the instant request and \$625 are filed, Petitioner should ensure the response includes *proof* Petitioner was unable to timely pay the fee. The current record fails to provide specific information regarding Petitioner's income, expenses, assets or liabilities.

If a response to the instant request and \$625 are filed, Petitioner should identify the nature of the card used to pay the 7.5 year maintenance fee on January 6, 2012. If the card was a credit card, Petitioner should explain why she needed to receive the January 6, 2012, prior to paying the fee with a credit card.

Petitioner may file a petition under 37 C.F.R. § 1.378(c) in response to the instant request instead of pursuing relief under 37 C.F.R. § 1.378(b) or requesting a refund of the \$1,500 filed January 27, 2012. A copy of a blank form which may be used to file such a petition is attached. A petition under 37 C.F.R. § 1.378(c) is different than a petition under 37 C.F.R. § 1.378(b) in two main respects.

- (1) (A) A petition under 37 C.F.R. § 1.378(b) must prove the entire delay in payment of a fee was unavoidable, and
(B) A petition under 37 C.F.R. § 1.378(c) merely needs to state the delay in payment of the fee was unintentional.
- (2) (A) The surcharge for a petition under 37 C.F.R. § 1.378(b) is \$700,
and
(B) The surcharge for a petition under 37 C.F.R. § 1.378(b) is \$1,640.

Since Petitioner has already submitted \$1,500, the remainder of the fees due if a petition under 37 C.F.R. § 1.378(c) is \$1,565 (\$1,425 + \$1,640 - \$1,500).

On May 5, 2012, Petitioner submitted a two-page letter, copies of papers previously received by Petitioner, and copies of papers previously filed by Petitioner.

The May 5, 2012 letter requests the Office review Petitioner's extenuating circumstances communications" pertaining to this case and accept the \$1,500 payment.

Discussion

The circumstances under which a patent may be reinstated are set forth in 37 C.F.R. § 1.378. Specifically, a patent may only be reinstated upon the submission of a grantable petition under 37 C.F.R. § 1.378(b) or a grantable petition under 37 C.F.R. § 1.378(c).

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Patent No. 6,669,657

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A petition under 37 C.F.R. § 1.378(b) must include payment of a \$700 surcharge. Petitioner has not submitted the \$700 surcharge. Since the \$700 surcharge has not been submitted, a grantable petition under 37 C.F.R. § 1.378(b) has clearly not been filed.

A petition under 37 C.F.R. § 1.378(c) must include payment of a \$1,640 surcharge. Petitioner has not submitted the \$1,640 surcharge. Since the \$1,640 surcharge has not been submitted, a grantable petition under 37 C.F.R. § 1.378(c) has clearly not been filed.

Since neither a grantable petition under 37 C.F.R. § 1.378(b) nor a grantable petition under 37 C.F.R. § 1.378(c) has been filed, the patent cannot be reinstated.

Steps to be Taken if Petitioner Wishes to Pursue Relief Under 37 C.F.R. § 1.378(b)

If Petitioner wishes to pursue relief under 37 C.F.R. § 1.378(b), Petitioner must respond to the instant letter within TWO MONTHS of the mailing date of this letter. Extensions of the two-month time period may not be obtained. The response should be titled, "Response to Request for Information."

In order to obtain relief under 37 C.F.R. § 1.378(b), a party must submit a \$700 surcharge. Petitioner previously submitted \$75 of the surcharge. Therefore, the response must include an additional \$625.

A grantable petition under 37 C.F.R. § 1.378(b) must include the maintenance fee, the required surcharge, *and* the following showing:

A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Since the \$700 surcharge has not been submitted, the Office will not address the sufficiency of the current showing in this case.

As a courtesy, the Office reminds Petitioner that Petitioner bears the burden of proving the failure to timely pay the maintenance fee was unavoidable if a petition is filed under 37 C.F.R. § 1.378(b). In general, a showing that a party was unable to afford the total fee due (\$1,500 in this case), must include relevant financial information for the party at the time the fee fell due. For example, in this case, such information would include Petitioner's income, expenses, assets and liabilities for November and December 2011.

Petitioner submitted a credit card authorization form on January 6, 2012. If Petitioner wishes to pursue relief under 37 C.F.R. § 1.378(b), the Office strongly suggests Petitioner address the nature of the card identified on the credit card authorization form. If the card was a credit card rather than a debit card, the Office strongly recommends Petitioner explain why Petitioner

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Patent No. 6,669,657

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needed to receive the January 6, 2012 check prior to paying the maintenance fee with the credit card.

Steps to be Taken if Petitioner Wishes to Pursue Relief Under 37 C.F.R. § 1.378(c)

Petitioner may file a petition under 37 C.F.R. § 1.378(c). A form which may be used to file such a petition is attached. The petition should include an additional \$1,565 (\$1,640 - \$75) for the required surcharge.

Petitioner May Request a Refund of the \$1,500

If Petitioner does not wish to pursue relief under 37 C.F.R. § 1.378, Petitioner may request a refund of the \$1,500 previously submitted to the Office. A request for a refund of the \$1,500 may be sent to: Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this letter should accompany any request for refund.


Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.¹ Document Code "PET.OP" should be used if the request is filed electronically.

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.


Anthony Knight
Director
Office of Petitions/
Petitions Officer

Attachments: Petition Under 37 C.F.R. § 1.378(c) Form
Privacy Act Notice

¹ General Information concerning EFS Web can be found at <http://www.uspto.gov/patents/process/file/efs/index.jsp>.

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ACCOUNT NO.	ACCOUNT TYPE
[REDACTED]	DIRECT CHECKING

STATEMENT PERIOD	PAGE
DEC. 08-JAN. 06, 2012	1 OF 5

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DEANNA THRUMAN ONGWELA
9231 REDBRIDGE CT
LAUREL MD 20723-1769

CONFIDENTIAL

INTEREST EARNED FOR STATEMENT PERIOD

0.00

ACCOUNT SUMMARY

BEGINNING BALANCE	DEPOSITS & OTHER ADDITIONS	CHECKS PAID	OTHER SUBTRACTIONS	CURRENT INTEREST PD	ENDING BALANCE
NO.	AMOUNT	NO.	AMOUNT		
189.56	7	6	38	0.00	2,087.99

ACCOUNT ACTIVITY

POSTING DATE	TRANSACTION DESCRIPTION	DEPOSITS, INTEREST & OTHER ADDITIONS	CHECKS & OTHER SUBTRACTIONS	DAILY BALANCE
12-08-11				189.56
12-08-11			70.00	
12-08-11			7.00	82.56
12-09-11		1,247.13		
12-09-11			100.00	
12-09-11			30.00	
12-09-11			6.47	
12-12-11			97.75	93.22
12-12-11			45.45	
12-12-11			45.00	
12-12-11			21.52	
12-12-11			21.19	962.31
12-12-11			124.28	
12-13-11			30.73	
12-13-11			15.00	792.30
12-13-11			20.00	
12-14-11			44.00	726.35
			0.32	720.03

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ACCOUNT NO.	ACCOUNT TYPE
[REDACTED]	DIRECT CHECKING

STATEMENT PERIOD	PAGE
DEC.08-JAN.06,2012	2 OF 5

DEANNA THRUMAN ONGWELA

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ACCOUNT ACTIVITY

POSTING DATE	TRANSACTION DESCRIPTION	DEPOSITS, INTEREST & OTHER ADDITIONS	CHECKS & OTHER SUBTRACTIONS	DAILY BALANCE
12-27-11			48.65	
12-27-11			40.63	
12-27-11			21.62	
12-27-11			9.33	1,834.28
12-28-11			237.81	1,296.77
12-29-11		510.00		
12-29-11			317.60	1,489.17
12-30-11			51.81	
12-30-11			12.00	1,425.36
01-03-12			25.00	
01-03-12			76.50	
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Credit Card Payment Form
(Do not submit this form electronically via EFS-Web)
Please Read Instructions before Completing this Form

Credit Card Information			
Credit Card Type: <input checked="" type="checkbox"/> Visa <input type="checkbox"/> MasterCard <input type="checkbox"/> American Express <input type="checkbox"/> Discover			
Credit Card Account #: [REDACTED]			
Credit Card Expiration Date: 10/2012		10/03/2012 DALLEN	00000010 6669657
		01 FC:1599	625.00 DP
Name as it Appears on Credit Card: Deanna Thurman Ongwela			
Payment Amount: \$ (US Dollars): 625.00			
Cardholder Signature: Deanna P. Ongwela		Date: 9/28/12	
<p>Refund Policy: The USPTO may refund a fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee will not entitle a party to a refund of such fee. The USPTO will not refund amounts of \$25.00 or less unless a refund is specifically requested and will not notify the payor of such amounts (37 CFR 1.26). Refund of a fee paid by credit card will be issued as a credit to the credit card account to which the fee was charged.</p> <p>Service Charge: There is a \$50.00 service charge for processing each payment refused (including a check returned "unpaid") or charged back by a financial institution (37 CFR 1.21 (m)).</p>			
Credit Card Billing Address			
Street Address 1: 9231 Redbridge Court			202 SEP 28 AM 10:51
Street Address 2:			
City: Laurel			
State/Province: MD		Zip/Postal Code: 20723	
Country: USA			
Daytime Phone #: 410.880.4091		Fax #: 410.880.4092 (not available at this time)	
Request and Payment Information			
Description of Request and Payment Information:			
Surcharge for Petition to accept unavoidably delayed payment of maint. fee CFR 1.378(b)			
<input type="checkbox"/> Patent Fee	<input type="checkbox"/> Patent Maintenance Fee	<input type="checkbox"/> Trademark Fee	<input checked="" type="checkbox"/> Other Fee
Application No.	Application No.	Application No.	IDON Customer No.
	09/665608		
Patent No.	Patent No.	Registration No.	
	66669657		Surcharge \$700.25 = \$625.00
Attorney Docket No.		Identify or Describe Mark	

If the cardholder includes a credit card number on any form or document other than the Credit Card Payment Form or submits this form electronically via EFS-Web, the United States Patent and Trademark Office will not be liable in the